

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

INDUSTRIAL & MISCELLANEOUS WORKERS,	)	
LOCAL 30	)	
	)	
Petitioner,	)	
	)	
SERVICE EMPLOYEES' INTERNATIONAL	)	
UNION, LOCAL 50	)	Public Case No. 80-019
	)	
Intervenor,	)	
	)	
vs.	)	
	)	
CITY OF PERRYVILLE, MISSOURI	)	
	)	
Respondent.	)	

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION**

**JURISDICTIONAL STATEMENT**

This case appears before the State Board of Mediation upon the Industrial and Miscellaneous Workers Union, Local 30, filing a petition for certification as public employee representative for certain employees of the City of Perryville. The Service Employees International Union, Local 50 has intervened, also seeking certification as the Perryville employees' public employee representative. The City contends that those workers employed as assistant superintendents should be excluded from the bargaining unit because they are supervisors. On November 21, 19880, a hearing was held in Clayton, Missouri at which representatives from Local 30, Local 50, and the City were present. The case was heard by a panel of three board members consisting of one employee member, one employer member, and the Chairman. The State Board of Mediation is authorized to hear and decide issues as to appropriate bargaining unit by virtue of Section 105.525, RSMo. 1978.

At the hearing the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law:

### **FINDINGS OF FACT**

Perryville's organizational structure is headed by the Mayor and the Board of Aldermen. In charge of the daily operations of the city is the city administrator. Immediately subordinate to the city administrator are six superintendents who supervise various departments within the city, including the street superintendent, the water and sewer superintendent, gas superintendent, police-chief, fire-chief, and the city clerk. In the water and sewer department, gas department, and street department there is an employee designated as assistant superintendent who is immediately subordinate to the superintendent of their respective departments. No evidence was submitted as to how many employees work in each of the departments.

Although the city administrator testified that the assistant superintendents have the authority to recommend the hiring and firing of employees in the absence of a superintendent, there is no evidence that the assistant superintendents have in fact made such effective recommendations. The assistant superintendents have never issued verbal or written reprimands, notwithstanding the city administrator's contention that the assistant superintendents have such power to discipline in the superintendent's absence.

It is clear that the assistant superintendents work regularly alongside the rank and file employees, whereas the superintendent works alongside other employees only in emergencies. The assistant superintendent directs and assigns the work force only when a superintendent is on vacation or is otherwise absent.

All superintendents are paid an annual salary without compensation for overtime. Assistant superintendents, however, receive hourly wages slightly above those of the rank and file employees, and receive overtime compensation.

### **CONCLUSIONS OF LAW**

Local 30 and Local 50, as intervenor, have petitioned to be certified as public employee representative of a bargaining unit comprised of certain Perryville employees, including those designated as assistant superintendents. The City contends that assistant superintendents are supervisors and therefore should be excluded from the bargaining unit. The Board has consistently held that supervisors cannot be included in the same bargaining unit as employees they supervise. St. Louis Fire Fighters Association, Local 73, IAFF, AFL-CIO vs. City of St. Louis, Case No. 76-013 (SBM 1976). Consequently, if the employees in question are in fact supervisors, they may not be included in the bargaining unit of the remaining employees. Therefore, in order to determine the appropriate bargaining unit, the Board must decide whether the workers are in fact supervisors. The City correctly points out that there is no Missouri case law providing guidance as to which employees should be considered supervisors. However, the Board, in its opinions, has consistently set forth factors which are considered in making supervisor determinations. St. Charles Professional Fire Fighters, Local 1921, IAFF v. St. Charles, Missouri, Case No. 79-024 (SBM 1979). Those factors are:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.

5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

Applying the above factors, it is clear that the assistant superintendents are not true supervisors. There is no evidence that the assistant superintendents effectively recommend the hiring and firing of employees. Assistant superintendents have little authority to discipline other employees in that there has never been an instance in which the assistant superintendent has issued a verbal or written reprimand. The assistant superintendents have little authority to direct the work force except on those occasions during which the superintendent is absent. As stated in Fire Fighters of Marshall, Missouri, Local 2706 vs. Marshall, Missouri, Case No. 79-036 (SBM 1979) "An employee must have supervisory authority of a permanent nature or at least for a substantial period of time" to be considered a supervisor. The assistant superintendents of Perryville do not have supervisory authority of a permanent nature, and therefore, cannot be considered supervisors in this regard.

Further, the assistant superintendents, unlike the superintendents, spend a majority of time working alongside the rank and file employees are compensated on an hourly basis as are the other non-supervisory employees. In short, in no way can the assistant superintendents be considered true supervisors. Instead their authority is more akin to that of a leadsman. Accordingly, the assistant superintendents must be included in the appropriate bargaining unit.

Signed this 24th day of March, 1981.

STATE BOARD OF MEDIATION

(S E A L)

/s/ Mary L. Gant

Mary L. Gant, Chairman

/s/ Herbert L. Shaw

Herbert Shaw, Employer Member

/s/ Robert Missey

Robert Missey, Employee Member